IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 32974 of 2006(A)

PETITIONER:

M/S.HENKEL SPIC (I) LTD.,
(NOW `HENKEL INDIA LTD.,' BY MERGER)
THAIKKATTUKARA, ALUVA, KOCHI,
REP. BY K. GOPINATHAN, AUTHORISED SIGNATORY &
DEPOT IN CHARGE, PALAKKAD.

BY ADV. SRI.JOSE JOSEPH

RESPONDENTS:

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1. THE ASST.COMMISSIONER (ASSMT) II,
COMMERCIAL TAXES, SPECIAL CIRCLE III,
ERNAKULAM.

2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM.

GOVT. PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) 32974/2006

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DATED THIS, THE 12TH DAY OF DECEMBER, 2006

J U D G M E N T

Petitioner challenges Ext.P5 order passed by the revisional authority, pending revision, in the interlocutory application filed by him seeking stay of collection of the amount demanded . The question as to the liability of the petitioner to pay the amount demanded itself is pending consideration in revision before the revisional authority. While completing the assessment, the assessing officer has also levied interest under Section 23(3A) of the Kerala General Sales Tax Act. It is the specific contention of the petitioner, that Section 23(3A) of the said Act will be attracted only if there is a failure to include any amount in the turnover or when the turnover has escaped assessment. In this case, neither these things happened. Petitioner has disputed his liability to pay tax; but included the amount in the return. Therefore, according to him, Section 23(3A) is wholly inapplicable.

2. There is force in this contention. The revisional authority has passed a mechanical order imposing a condition to pay 50% of the amount.

In the factual situation, the condition imposed is not justified. Petitioner relies on the decision reported in **P.K. Damodaran Vs. State of Kerala ((2004) 12 KTR 133 (KER.))**

3. Accordingly, there will be an order of stay of realization of interest as assessed as per Ext.P2 pending consideration of the revision by the revisional authority, till its disposal. Ext.P5 order stands modified as above.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-